



DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2021-OSERS-0018]

Proposed Priorities--Technical Assistance and Dissemination
to Improve Services and Results for Children with
Disabilities and Technical Assistance on State Data
Collection--National Assessment Center

AGENCY: Office of Special Education and Rehabilitative
Services, Department of Education.

ACTION: Proposed priorities.

SUMMARY: The Department of Education (Department) proposes
two funding priorities for a National Assessment Center
under the Technical Assistance and Dissemination to Improve
Services and Results for Children with Disabilities program
and under the Technical Assistance on State Data Collection
program, Assistance Listing Number 84.326G. The Department
may use these priorities for competitions in fiscal year
(FY) 2021 and later years. We take this action to focus
attention on an identified need to address national, State,
and local assessment issues related to students with
disabilities.

DATES: We must receive your comments on or before [INSERT
DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL
REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery: If you mail or deliver your comments about the proposed priorities, address them to David Egnor, U.S. Department of Education, 400 Maryland Avenue, SW, room 5163, Potomac Center Plaza, Washington, DC 20202-5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: David Egnor, U.S. Department of Education, 400 Maryland Avenue, SW, room

5163, Potomac Center Plaza, Washington, DC 20202-5076.

Telephone: (202) 245-7334. Email: David.Egnor@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding Proposed Priority 2, including: (1) the program requirements under Proposed Priority 2; and (2) the application and administrative requirements under the common elements section of Proposed Priority 1 and Proposed Priority 2, but only as the requirements apply to Proposed Priority 2.¹ To ensure that your comments have maximum effect in developing the final priorities, we urge you to clearly identify the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priorities. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

¹ Under section 681(d) of the Individuals with Disabilities Education Act (IDEA), the Secretary may, without regard to rulemaking, fund activities under Proposed Priority 1.

During and after the comment period, you may inspect all public comments about the proposed priorities by accessing Regulations.gov. Due to the novel coronavirus 2019 (COVID-19) pandemic, the Department buildings are currently not open. However, upon reopening, you may also inspect the comments in person in room 5163, 550 12th Street, SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing technical assistance (TA), supporting model demonstration projects,

disseminating useful information, and implementing activities that are supported by scientifically based research. The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet the IDEA data collection and reporting requirements. In addition, the Consolidated Appropriations Act, 2021, gives the Secretary authority to use funds reserved under section 611(c) to administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.

Program Authority: 20 U.S.C. 1411, 1416, 1463, and 1481; and the Consolidated Appropriations Act, 2021, Div. H, Title III of Public Law 116-260, 134 Stat. 1182.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Program Regulations: 34 CFR 300.702.

PROPOSED PRIORITIES:

This notice contains two proposed priorities. In accordance with 34 CFR 75.105(b)(2)(v), Proposed Priority 1 and Proposed Priority 2 are from allowable activities specified or otherwise authorized in the Individuals with Disabilities Education Act (IDEA) (see sections 663 and 681(d) of the IDEA, 20 U.S.C. 1463 and 1481(d)). In addition, Proposed Priority 2 is from allowable activities

in sections 611(c) and 616(i) of the IDEA (20 U.S.C. 1411(c) and 1416(i)) and the Consolidated Appropriations Act, 2021, Div. H, Title III of Public Law 116-260, 134 Stat. 1182.

Proposed Priority 1: Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities--National Assessment Center.

Background:

Section 612(a)(16) of the IDEA requires that all students with disabilities are included in all general State and districtwide assessments, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs. In accordance with Federal law, there are several ways for students with disabilities to participate appropriately in State and districtwide assessments: General assessments without accommodations, general assessments with accommodations, and alternate assessments that are based on alternate academic achievement standards for students with the most significant cognitive disabilities with or without accommodations as necessary.

Despite the progress State educational agencies (SEAs) and local educational agencies (LEAs) have made in

including students with disabilities in assessments and accountability systems, SEAs and LEAs continue to face challenges, such as (1) integrating data from dissimilar tests (e.g., general without accommodations, general with accommodations, alternate) into a single accountability system; (2) developing consistent SEA and LEA policies on assessment accommodations that provide maximum accessibility while maintaining test reliability and validity; (3) analyzing and using diagnostic, interim,² and summative assessment data to improve instruction, learning, and accountability for students with disabilities; and (4) addressing test security, accessibility, technical support, and other challenges associated with transitioning from traditional paper-and-pencil assessments to digitally-based assessments (DBAs), including DBAs that can be delivered via distance education and other remote service delivery models of instruction.

Furthermore, one of the most complex challenges faced by SEAs and LEAs is developing and administering English language proficiency (ELP) assessments to students who are both English learners (ELs) and students with disabilities (U.S. Department of Education, 2014). Properly identifying these students is also a significant challenge if their disabilities are masked by their limited English

² For the purposes of this priority, the term "interim assessments" refer to assessments that are administered several times during a school year to measure progress. Another term that is sometimes used to describe these assessments is "formative assessments."

proficiency, or vice versa. Improper identification may lead to inappropriate instruction, assessments, and accommodations for these students. Linguistic and cultural biases may also affect the validity of assessments for ELs with disabilities.

Finally, the Department notes that in many schools, there may be unnecessary testing or unclear purpose applied to the task of assessing students, including students with disabilities, that consumes too much instructional time and creates undue stress for educators and students. (For more information, see the Department's February 2, 2016, letter to Chief State School Officers available at www2.ed.gov/admins/lead/account/saa/16-0002signedcsso222016ltr.pdf.)

These and other complex challenges will continue to arise as States continue to implement, revise, or adopt new challenging academic content standards and develop new, valid, more instructionally useful, and inclusive assessments aligned to these standards. Developing these new assessments has been and will continue to be challenging and time-consuming, and States and LEAs need support in identifying and implementing effective practices for identifying and including children with disabilities in State and districtwide assessments. Moreover, methods for analyzing and effectively using State and districtwide assessment data to improve instruction, learning, and

accountability for students with disabilities will continue to need further development, refinement, and technical support.

Proposed Priority:

The purpose of this proposed priority is to fund a cooperative agreement to support the establishment and operation of a National Assessment Center (Center) to address national, State, and local assessment issues related to students with disabilities. The Center must achieve, at a minimum, the following expected outcomes to ensure the inclusion of students with disabilities in State and districtwide assessments and accountability systems:

Knowledge Development Outcomes.

(a) Increased body of knowledge on practices supported by evidence to collect, analyze, synthesize, and disseminate relevant information regarding State and districtwide assessments of students with disabilities, including on topics such as--

- (1) The inclusion of students with disabilities in accountability systems;
- (2) Assessment accommodations;
- (3) Alternate assessments;
- (4) Universal design of assessments;
- (5) Technology-based assessments, including DBAs;
- (6) Interim assessments;
- (7) Competency-based assessments;

- (8) Performance-based assessments;
- (9) Methods for analyzing and reporting assessment data (including methods for addressing assessment data interoperability challenges);
- (10) Application of growth models in assessment programs;
- (11) Uses of diagnostic, interim, and summative assessment data to inform instructional programs for students with disabilities; and
- (12) Identifying and assessing ELs with disabilities, including ensuring that all ELs with disabilities receive appropriate accommodations, as needed, on ELP assessments, and that the results of ELP assessments for students with disabilities are validly used in making accountability determinations under the ESEA.

(b) Increased capacity of SEA and LEA personnel to assess SEA and LEA needs, and track SEA and LEA activities and trends, related to including students with disabilities in State and districtwide assessments, including, as appropriate, improving the knowledge and skills of SEA and LEA personnel related to any of the topics listed in paragraph (a) of the Knowledge Development Outcomes section of the proposed priority.

Technical Assistance and Dissemination Outcomes.

(a) Increased capacity of SEA and LEA personnel to collect and analyze diagnostic, interim, and summative

assessment data on the performance of students with disabilities, including ELs with disabilities.

(b) Increased capacity of SEA and LEA personnel to use diagnostic, interim, and summative assessment data to evaluate and improve educational policies and increase accountability for students with disabilities, including ELs with disabilities.

(c) Increased capacity of LEA personnel to use diagnostic, interim, and summative assessment results in instructional decision-making to improve teaching and learning for students with disabilities, including ELs with disabilities.

(d) Increased awareness of national policymakers regarding how students with disabilities are included in and benefit from current and emerging approaches to State and districtwide assessment, including topics listed in paragraph (a) of the Knowledge Development Outcomes section of this priority.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under Proposed Priority 1 and Proposed Priority 2 Common Elements.

Proposed Priority 2: Targeted and Intensive Technical Assistance to States on the Analysis and Use of Diagnostic,

Interim, and Summative Assessment Data to Support
Implementation of States' Identified Measurable Results.

Background:

The purpose of this priority is to (1) assist States in the analysis and use of diagnostic, interim, and summative assessment data to support the implementation of States' State-Identified Measurable Results (SIMR) as described in their State Systemic Improvement Plan (SSIP); and (2) support State efforts to provide TA to LEAs in the analysis and use of diagnostic, interim, and summative assessment data to support the implementation of the SIMR, as appropriate.

As detailed in the background section for Proposed Priority 1, research indicates that SEAs and LEAs continue to face challenges in analyzing and using diagnostic, interim, and summative assessment data to improve instruction, learning, and accountability for students with disabilities. SEAs also need assistance analyzing State assessment data submitted as part of the SSIP and the SIMR in accordance with section 616 of IDEA and the Office of Special Education Programs (OSEP) guidance. Beginning in the IDEA Part B Federal fiscal year (FFY) 2013 State Performance Plan/Annual Performance Report (SPP/APR), States were required to provide, as part of Phase I of the SSIP, a statement of the result(s) the State intends to achieve through implementation of the SSIP, which is

referred to as the SIMR for Children with Disabilities. States were required to establish "measurable and rigorous" targets for their SIMRs for each successive year of the SPP (FFYs 2014 through 2019) and will be required to do so for each year of the next SPP (FFYs 2020 through 2025) as part of their SPP/APR submissions. At least 36 States have focused their SIMRs on improving academic achievement as measured by assessment results for children with disabilities. These States will need assistance in analyzing and using State and districtwide assessment data to promote academic achievement and to improve results for children with disabilities.

Proposed Priority:

The purpose of this priority is to (1) assist those States that have a SIMR related to assessment results in analyzing and using diagnostic, interim, and summative assessment data to better achieve the SIMR as described in their IDEA Part B SSIPs; and (2) assist State efforts to provide TA to LEAs in analyzing and using State and districtwide assessment data, for those States that have a SIMR related to assessment, to better achieve the SIMR, as appropriate. The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of SEA personnel in States that have a SIMR related to assessment results to analyze and use diagnostic, interim, and summative assessment data

to better achieve the SIMR as described in the IDEA Part B SSIP, including using diagnostic, interim, and summative assessment data to evaluate and improve educational policy, inform instructional programs, and improve instruction for students with disabilities; and

(b) Increased capacity of SEA personnel to provide TA to LEAs to analyze and use diagnostic, interim, and summative assessment data to improve instruction of students with disabilities and support the implementation of the SIMR.

In addition to these program requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under Proposed Priority 1 and Proposed Priority 2 Common Elements.

Proposed Priority 1 and Proposed Priority 2 Common Elements:

In addition to the program requirements contained in both priorities, to be considered for funding applicants must meet the following application and administrative requirements,³ which are:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will--

³ Paragraph (b) (5) (ii) applies only to Proposed Priority 1. Paragraph (b) (5) (iv) applies only to Proposed Priority 2.

(1) Address the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities. To meet this requirement the applicant must--

(i) Present applicable national, State, and local data demonstrating the needs of SEAs and LEAs to analyze and use diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Demonstrate knowledge of current educational issues and policy initiatives related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(iii) Describe the current level of implementation related to analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(2) Improve the analysis and use of diagnostic, interim, and summative assessment data to improve teaching and learning for students with disabilities.

(b) Demonstrate, in the narrative section of the application under "Quality of project services," how the proposed project will--

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will--

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients (e.g., by creating materials in formats and languages accessible to the stakeholders served by the intended recipients);

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide--

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model⁴ by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed

⁴ Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (i.e., the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks:

www.osepideasthatwork.org/logicModel and

www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research and make use of evidence-based⁵ practices (EBPs). To meet this requirement, the applicant must describe--

(i) The current research on the effectiveness of analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities; and

(ii) How the proposed project will incorporate current EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe--

⁵ For the purposes of this priority, "evidence-based" means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

(i) How it proposes to identify or develop the knowledge base on analyzing and using diagnostic, interim, and summative assessment data in instructional decision-making to improve teaching and learning for students with disabilities;

(ii) Its proposed approach to universal, general TA,⁶ which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,⁷ which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure,

⁶ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

⁷ "Targeted, specialized TA" means TA service based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,⁸ which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the collection, analysis, and use of diagnostic, interim, and summative assessment

⁸ "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

data in instructional decision-making to improve teaching and learning for students with disabilities; and

(E) Its proposed plan for collaborating and coordinating with Department-funded TA investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of the priorities;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe--

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and

implemented by a third-party evaluator.⁹ The evaluation plan must--

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b) (2) (ii) of these Priority 1 and Priority 2 Common Elements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available

⁹ A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, Fourth and Fifth Years of the Project; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a "third-party" evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources and quality of project personnel," how--

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements.
The applicant must--

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;¹⁰

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, or virtually, after receipt of the award, and an annual planning meeting in Washington, DC, or virtually, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, or virtually, during each year of the project period;

(iii) Two annual two-day trips, or virtually, to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, or virtually, during the second year of the project period;

¹⁰ OSEP has found that a minimum of a three-quarter time equivalency (0.75 FTE) in the role of project director (or divided between a half-time equivalency in the role of the project director and a quarter-time equivalency in the role of a co-project director) is necessary to ensure effective implementation of the management plan and that products and services provided are of high quality, relevant, and useful to recipients.

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including--

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in providing technical assistance to SEA and LEA personnel in

including students with disabilities in assessments and accountability systems. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priorities

We will announce the final priorities in a document published in the *Federal Register*. We will determine the final priorities after considering public comment and other information available to the Department. This document does not preclude us from proposing additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities based on a reasoned determination that their benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563. In summary, the potential costs associated with these priorities would be minimal, while the potential benefits are significant. The Department believes that this regulatory action does not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this

regulatory action will be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will not be excessively burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Paperwork Reduction Act of 1995

The proposed priorities contain information collection requirements that are approved by OMB under OMB control

number 1820-0028; the proposed priorities do not affect the currently approved data collection.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department

could make these proposed regulations easier to understand, see the instructions in the ADDRESSES section.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are local educational agencies (LEAs), including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; and freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priorities would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priorities would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance and Dissemination to Improve Services and Results for Children

with Disabilities program is voluntary. For this reason, the proposed priorities would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priorities would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to

whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document,

as well as all other documents of this Department published in the *Federal Register*, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

David Cantrell,
*Deputy Director, Office of Special
Education Programs, delegated the
authority to perform the functions
and duties of the Assistant
Secretary for the Office of
Special Education and
Rehabilitative Services.*

[FR Doc. 2021-06264 Filed: 3/23/2021 4:15 pm; Publication Date: 3/25/2021]